1940

General Mills, Inc. and Zurich General Accident and Liability and Insurance Company, Ltd v. Industrial Commission of Utah and Olga Lassen Hansen : Brief of Respondent

Utah Supreme Court

Dan B. Shields, Geo G. Armstrong; attorneys for the respondent.

In the Supreme Court
Of the State of Utah

GENERAL MILLS, INC., a corporation of the State of Delaware, doing business under the trade name of SPERRY FLOUR COMPANY, Western Division of General Mills, Inc., and ZURICH GENERAL ACCIDENT AND LIABILITY INSURANCE COMPANY, LIMITED,

Plaintiffs,

vs.

INDUSTRIAL COMMISSION OF UTAH and OLGA LASSEN HANSEN,

Defendants.

No. 6192

DEFENDANT OLGA LASSEN HANSEN'S BRIEF

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ADDITIONAL STATEMENT OF FACTS

In the proceedings or hearing held at Ogden, Utah, June 5, 1939, Commissioner Knerr stated, on pages 2, 3 and 4 of the record, what the record showed and then asked of the representative of the Sperry Flour Company, Neil R. Olmstead, the following question: "Are you willing to admit that on March 17, 1938,

Marius Hansen was injured by reason of an accident arising out of or in course of his employment by the Sperry Flour Company?''

Mr. Olmstead: ''Just a moment. I have an objection that I would like to state for the record.'' When granted permission, Mr. Olmstead said: ''On behalf of the Sperry Flour Company and the Zurich General Accident and Liability Company its insurance carrier, I object to any proceedings on this application filed for the reason that it includes therein a claim for disability and compensation for the period from June 1, 1938, to April 18, 1939, and that this applicant, or these applicants, are not entitled to apply for or receive compensation for the period of disability that existed prior to Mr. Hansen's death.

''I make that objection to the application as a whole, and I have a further objection to make, and I make an objection as follows:

''On behalf of the Sperry Flour Company and the Zurich General Accident and Liability Insurance Company, Ltd., I object to that portion of the application wherein claim is made for disability compensation for the period from June 1 to April 18, 1939, for the reason that the applicants are not entitled to apply for or receive compensation for the period of disability that existed prior to Mr. Hansen's death.''

Com. Knerr: ''Your objection as to that is overruled. I take it you are familiar with the Supreme Court decision on that in the Park case.''

Are you willing to admit that on March 17, 1938, the deceased herein was injured by reason of an accident arising out of or in the course of his employment while employed by the Sperry Flour Company?"

Mr. Olmstead: "We will so admit."

Com. Knerr: "Are you willing to stipulate that as a result of said injury he died on April 18, 1939?"

Mr. Olmstead: "We will not so stipulate."

Com. Knerr: "Are you willing to stipulate that Marius Hansen on the date of his injury was paid a wage amounting to the sum of $240.00 per month working six days per week?"

Mr. Olmstead: "Yes."

Com. Knerr: "Are you willing to stipulate that the (page 5) applicant is the widow of the deceased? And was living with him at the time of the injury? And was dependent on him for her maintenance and support?"

Mr. Olmstead: "Yes."

Com. Knerr: "And that a minor daughter, June Hansen, 18 years of age on May 2, 1939, was the daughter of the decedent and was living with him at the time of his accident and that she was dependent on him for her maintenance and support up to the time of his death?"

Mr. Olmstead: "We will stipulate as to that."

Com. Knerr: "The only question at issue is as to whether or not Marius Hansen who was injured on March 17, 1938, by reason of an accident arising out of or in the course of his employment while employed by the Sperry Flour Company, and as to whether or not as a result of said injury he died on April 18, 1939; and also the question as to whether or not the applicant would be entitled to be paid compensation on account of temporary total disability suffered by Marius Hansen on and after June 1, 1938, up to the date of his death April 18, 1939?"

Mr. Olmstead: "The only claim with respect to the death benefit is the question as to whether or not death was the result of the accident that occurred on March 1, 1938?"

Com. Knerr: "Correct."

Mr. Olmstead: "And the question of whether or not this applicant is entitled to receive any benefits during the period of June 3, 1938, to the date of Mr. Hansen's death?"

Com. Knerr: "Yes. That is a matter of law."

Mr. Olmstead: "Yes, or a matter of fact."

The above is the entire record as to any stipulations mentioned then.

On page 25 of the report of the hearing at Salt Lake City, Utah, on July 26, 1939, appears the following:

Mr. Olmstead: "I might state for the record that at the time of the first hearing the defendants of course

did not know what they would have at this time and at that time we were laboring under the impression that the injury occurred on March 17th in the course of Mr. Hansen's employment, and at that time it was stipulated between the parties that Mr. Hansen was injured on that date, in the course of his employment. But in view of what I know now it becomes necessary for me to withdraw from that stipulation and to advise the parties that we are making an issue on the question of whether or not Mr. Hansen was engaged in—Mr. Hansen was in fact injured in the course of his employment. I state that into the record at this time so that the other parties may be able to meet the issue."

Com. Jugler: "We will continue the case until tomorrow afternoon. with the definite understanding that it will be closed at that time, and if there is any other reason for a continuance after that you will have to ask for a new hearing."

Thereupon this matter was continued until the following afternoon at two o'clock.

At Salt Lake City, July 27, 1939, for the first time an attorney appeared for the applicants and then the record shows that Dan B. Shields appeared for them. Esther Peterson was sworn as a witness for appellant, and on pages 27 to 30 of the record appears her testimony which in substance is that on a Sunday evening around March 20, 1938, she was present when Mr. Hansen was in an automobile collision while he was operating his car, and only he and the witness were present; that Mr. Hansen's car was proceeding north

between seven and eight o'clock as they were entering Sigurd, and at a turn in the road just before one crosses the railroad track another car came in an opposite direction at a terrific rate of speed and hit the left front wheel and fender of the Hansen car and damaged them; that the other car speeded away and "it gave him a terrific jolt" and that she didn't know of any other injuries, that "he complained of a terrible lump in his stomach right here. He complained to me about it and he hadn't complained to me about it previous" of a pain in his chest. He was able to operate the car and drove as far as Gunnison where he remained that night; that she rode with Mr. Hansen on either Thursday or Friday before this Sunday night from Centerfield to Richfield and he didn't complain of any disability at that time to her.

ARGUMENT

On page 4 of plaintiff's brief they say: "It is not disputed that Marius Hansen was an employee of the plaintiffs, that the General Mills, Inc. (Sperry Flour Company) was at all times herein concerned as an employer under the workmen's compensation law of the State of Utah, or that if Marius Hansen was injured in the course of employment he would be entitled to compensation, or that if he died as a result of injuries arising out of and in the course of his employment his dependents would be entitled to compensation. * * * That Marius Hansen sometime in March sustained serious injuries is not contested."

By turning to page 1 of the record, it will be found that R. L. Hickman, Office Manager of the Sperry Flour Company (page 20 of record made in Salt Lake City) under date of March 25, 1938, made a report, under the provisions of 42-1-90, Revised Statutes of Utah, 1933, in which he states that Marius Hansen, an employee of the Sperry Flour Mill Company, who was being paid $240.00 per month, was "injured on March 17, 1938, at 10:30 A. M." while "Driving south of Payson, Utah, on highway No. 91 when rounding a curve in the road struck an icy place on the road, causing car to leave highway throwing Mr. Hansen against the steering wheel and wind shield" and the exact part of the person injured was "Ruptured Stomach" and that the machine with which the injury occurred was an "auto" and the part injuring him was "Steering Wheel" and on -2- is an Employer's Supplemental Report of Injury from the Sperry Flour Company giving Employee's name as Marius Hansen, Date of Injury 3-17-38 which purports to be signed by Geo. Hohl, chief accountant and dated 6-2-38. That in a letter from DeVine, Howell & Stine by Neil R. Olmstead to the Industrial Commission under date of March 23, 1939, the date of injury was stated as March 17, 1938, and also in almost all other exhibits the same date appears.

Under Statement of Errors (page 7 of plaintiff's brief) the only error assigned is "There is no evidence whatever in the record that Mr. Hansen was injured while in the course of his employment either on March

17, 1938, or March 20, 1938, near Payson, Utah, and that if he died as the result of injuries sustained in an accident it was the accident of March 20, 1938."

To sustain this position, they argue that "a stipulation which is entered into by mistake or inadvertance may be withdrawn, and that it is within the sound discretion of the Court to permit the withdrawal of such stipulation provided the other party is not thereby placed at a disadvantage," and "that the Commission accepted the withdrawal of the stipulation by adjourning the case to permit the introduction of testimony which showed the stipulation to be untrue and permitted the introduction of such testimony and that neither the withdrawal of the stipulation nor the testimony was objected to by anyone and that such evidence is the only positive evidence in the record of the time, place or circumstance of an injury to Mr. Hansen."

As noted above, counsel at the hearing in Ogden was asked if they were willing to admit that on March 17, 1938, the deceased herein was injured by reason of an accident arising out of or in course of his employment while employed by the Sperry Flour Company, and he answered, "We will so admit."

That admission was never withdrawn, nor the admissions made by Mr. R. L. Hickman made under date of March 25, 1938, in the report above referred to. After that admission had been made, there were certain so-called stipulations put into the record, and apparently it was these that they requested to withdraw.

In Civil Jury Trials by Austin Abbott, on page 413 it is said:

"A formal admission of a material fact made by counsel in course of the trial of the issues for the purpose of influencing the course of the trial is conclusive upon the client citing Frey vs. Myers, Tex. Civ. App., 113 S. W. 592."

1 C. J. 1363:

"In the law of evidence, a voluntary acknowledgment by a party of the existence of the truth of certain facts, a concession or acknowledgment made by a party of the existence or truth of certain facts, a statement of a fact against the interest of the party making it, an acknowledgment of the existence of a fact, of which it is evidence only in the sense that it dispenses with the proof of it."

Geobrig vs. Stryker, 174 Fed. 897, 899; 22 C. J. 330, § 370:

"When a judicial admission is once made, it is, unless the Court permits it to be withdrawn as having been made by mistake or improvidently, binding on the parties, and counsel, and even on the Court itself, except as to matters of law."

Waldron vs. Waldron, 156 U. S. 361, 39 L. Ed. 453.

Prestwood vs. Watson, 111 Ala. 604-608; 20 So. 600.

Holley vs. Young, 68 MC 215; 28 Am. Rep. 40.

Connor vs. Lake Shore, etc. R. Co., 168 Mich. 29; 133 N. W. 1003.

In Holley vs. Young, supra, the Court says:

"When admissions are made deliberately and intelligently, in the presence of the Court and reduced to writing, they are of the best species

of evidence, and the parties cannot be permitted to retract admission of fact, made in any form."

In Connor vs. Lake Shore, etc. R. Co. supra, the Court said that where there was other proof establishing the fact admitted at a former trial, admissions cannot be withdrawn.

As to the stipulations set forth above, they were to the effect that $240.00 per month was what Mr. Hansen was paid, and that the applicant was the widow of the deceased and was living with him at the time of the injury and was dependent on him for her maintenance and support and also as to the daughter, June Hansen.

In Brink vs. Ind. Comm., 368 Ill. 607; 15 N. E. 2nd 491, it is held that parties will not be relieved from a stipulation in absence of a clear showing that the matter stipulated is untrue, and then only when the application is to be relieved is reasonably made.

Brown vs. Superior Court, Cal. 52 P. 2nd 256, holds that granting of a motion to set aside stipulation rests in discretion of the trial court.

Haney vs. Holt, 179 Ark. 403, 16 S. W. 463, says that failure to set aside a stipulation entered into between parties' attorneys and reciting defendants indebtedness to plaintiffs held not an abuse of discretion.

Foot vs. Adams, 248 N. Y. S. 539, 232 App. Div. 60, held that parties should not be lightly and unnecessarily relieved from a stipulation entered into by misapprehension.

Wilder vs. Beach, 245 N. Y. S. 142, 137 Misc. 883, holds that stipulations in open court, made

part of the record, could be set aside only for fraud, collusion or mistake, and a failure to comply therewith was not excused because not willful.

Clark vs. Deleware and H. R. R. Corp., 283 N. Y. S. 739, 245 App. Div. 447, holds that where party seeks to be relieved from stipulation relied upon by adversary, court should not exercise its discretion if relief would prejudice substantial rights.

Northern Pacific Ry. Co. vs. Barlow, 20 N. Dak. 197, 126 N. W. 233, Ann. Cas. 1912 C, 763, says "While the appellate court will not interfere with nor control the exercise of the discretion thus vested in trial court, except in cases of clear abuse of such discretion, in this case the action of the court setting aside the stipulation of counsel as to the facts was an abuse of discretion which the appellate court must set aside." Citing Keen vs. Robertson, 46 Nebr. 837, 65 N. W. 897, which holds: "When their enforcement would result in serious injury to one of the parties and the other party would not be prejudiced by being set aside."

Lewis vs. Sumner, 13 Met. (Mass.) 269.

Lincoln vs. Lincoln St. R. Co., 67 Nebr. 469, 93 N. W. 766 where it was held: "In sustaining the ruling of the trial court in refusing to relieve plaintiff therefrom the Court among other things said: 'It would also seem that the application came too late to be entertained by the Court. The plaintiff had made its case and rested. It put in evidence all of the stipulation except the portion of it which defendants were attempting to introduce, and it would have been injust at that stage

> of the proceedings to deny defendants the benefit of these paragraphs. Yet counsel insist that the Court, in the exercise of its discretion, ought to have sustained the objection and granted the request; the result would have been a mistrial. It would have rendered it necessary to retry the whole case, and to require this to be done would have been an abuse of discretion.' ''

There has been a loose use of the word ''stipulation'' in this proceedings, to wit: Where Commissioner Knerr asks Mr. Olmstead if he will stipulate to certain matters. According to the usual use of that word, a stipulation is an agreement between counsel respecting business before a Court. It would be peculiar for one side to enter into a stipulation with the Court as to the facts. Here the only explanation would be that as the applicant did not have an attorney present, the Commissioner tried to simplify the hearing by getting certain matters settled and thereby, in a way, keep the hearing from being one sided. At any rate, the only matters labeled as stipulations are as set forth above, and they must be what the counsel referred to when he asked to withdraw his stipulations. They certainly did not withdraw their admissions.

In their argument, plaintiffs claim as follows: ''In the case at bar the stipulation was withdrawn without objection from anyone. The commission accepted the withdrawal of the stipulation by adjourning the case to permit the introduction of testimony which showed the stipulation to be untrue, and did permit the introduction of such testimony. This testimony was not objected to by anyone, and is the only positive evidence in the record

as to the time, place and circumstances of any injury to Mr. Hansen."

We now refer to that testimony and how it was received. In the first place, it came when for the first time the aplicants had an attorney present and the record shows that that attorney could have had no knowledge as to what the record showed as to any admissions or stipulations and as the law says, 42-1-82, that "The Commission shall not be bound by the usual common law or statutory rules of evidence, or by any mechanical or formal rules of procedure, other than as herein provided, but may make its investigations in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this title."

The Commission could have applied the wording of the statute set forth in 104-49-2, Sub. 3, Revised Statutes of Utah, 1933, and disregarded the whole of this evidence on which the plaintiffs herein rely and very justly have done so. The only other person who could have known of the truth or falsity of the evidence was dead and the law put on the plaintiffs the burden of investigating accidents to its employees (42-1-92) and they made such an investigation, and made the report to the Commission, as is shown in page 1 of the record, and admitted that the accident on which the proceedings were had under Mr. Hansen's application for compensation was granted and paid. If this testimony had then been offered, Mr. Hansen was alive to have met what is said about an accident on March 20, 1938, by this witness and probably explained what this witness terms "a

terrible jolt'' and why he saw fit then to say anything about any injuries he was suffering from, and from what accident they arose.

This testimony does not show, in any way, that Mr. Hansen had not been injured on March 17, 1938, just as the proof offered showed, and also admitted by the plaintiffs' attorney in this hearing as is above set forth. The Commission had all of this and also the testimony of the doctors who were fully informed as to what the condition of Mr. Hansen then was and the results from that testimony. The record clearly shows that Mr. Hansen was at all times trying to do the work to which he was assigned and from which he was earning $240.00 per month with which to support his dependents, and consequently even if he was suffering from that injury of March 17, 1938, he tried to carry on, and that he was not a man to talk about his sufferings. On page 19 of the testimony taken at Ogden his wife, in answer to a question as to what she knew of his condition between November and when he came back in March from California, said: ''He never mentioned anything to me.''

Section 42-1-79, Revised Statutes of Utah, 1933, reads: ''The findings and conclusion of the Commission of questions of fact shall be conclusive and final and shall not be subject to review, etc.''

If the contention of the plaintiffs, that the Commission had to permit the withdrawal of their stipulations, be accepted by this Court as the law, then this

Court should return the whole matter to the Industrial Commission for an entire rehearing. Unless such an order should be made under the circumstances presented here, the respondent would be placed at a disadvantage never contemplated by the legislature, because the respondent, in the first place, was without information as to the effect of a withdrawal of the testimony, and secondly, no real reason was given or proved to justify the withdrawal. As a matter of fact, the withdrawal of the stipulation would not, in any sense, disprove that an accident occurred on the 17th of March, 1938, nor would it have any effect in disproving that the deceased had been compensation without objection by the plaintiffs up to June 1, 1938. If there is any disposition on the part of the Court to consider that insufficient evidence was before the Commission to justify its award to defendant Olga Lassen Hansen, then in that event the only logical conclusion must be that the matter should be referred to the Industrial Commission for the taking of additional testimony.

We submit that the Industrial Commission was justified in making the award that there was ample proof by admission of the appellants' counsel and by its officers in the report of the accident, that such an accident had occurred and that it did occur in the course of employment of the deceased even if there were nothing else in the record, and that as a result the action of the Industrial Commission should be approved. However, if there shall be any question with reference thereto, then it is respectfully submitted that the matter should

be referred to the Industrial Commission for the taking of further testimony.

Respectfully submitted,

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